

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FAMILY SERVICE LIFE INSURANCE
COMPANY,

Plaintiff,

vs.

DIANE STELLY and DOUGLAS D. HERR,

Defendants.

8:10CV142

ORDER

This matter is before the court on the notice regarding order on miscellaneous relief, Filing No. 31, and the notice by Diane Stelly as beneficiary of the policy, Filing No. 32. Family Service Life Insurance filed this action for interpleader and declaratory relief against the defendants. Filing No. 1. Summonses were issued and executed as to both defendants. Neither defendant filed an answer.¹ Plaintiff then filed a motion for default, Filing No. 18, and the clerk entered default. Filing No. 25.

Family Service Life Insurance then filed a motion for default judgment, Filing No. 26, and the court entered default judgment. Filing No. 28. Thereafter, Family Life Insurance Company filed a motion asking this court to permit the \$9,633.17 to be deposited with the Clerk of Court. Filing No. 29. The court granted the motion, Filing No. 30, and Family Service Life Insurance paid the money to the Clerk of Court.

The Clerk of Court recently notified this court that no one had claimed the funds. The court contacted counsel for Family Service Life Insurance Company, Jill Ackerman, who contacted the attorney for Diane Stelly. Thereafter, defendant Diane Stelly filed her claim for the funds held by the Clerk of Court. Filing No. 32.

¹ Both defendants filed claims with Family Life Insurance Company for the proceeds. However, Diane Stelly was the named contingent beneficiary under the policy, as the primary beneficiary had disclaimed all interest in the policy. Filing No. 1, Complaint at 3-4; Filing No. 1, Ex. 1-1, 1-2, Life Insurance Application and Revocable Assignment. Family Service Life Insurance Company notified defendant Herr that he is not a named beneficiary of this policy. Filing No. 1, Complaint, Attachment 1-7. Ex. G and 1-9, Ex. I. He has not further pursued this claim.

The court finds that Diane Stelly is entitled to receive the funds herein, as no one else has made a claim for the same. Accordingly, the court finds the proceeds are payable to defendant Diane Stelly.

THEREFORE, IT IS ORDERED:

1. Defendant's notice and request for distribution of funds, Filing No. 32, is granted; and

2. The Clerk of Court is hereby ordered to distribute the principal amount of \$9,633.17 to Diane Stelly, by certified mail, return receipt requested, at her address as indicated in Filing No. 32. Upon return of the certified mail receipt, the clerk's office shall file a copy of the receipt in the court file.

Dated this 14th day of June, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge